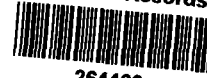


EPA Region 5 Records Ctr.



264466

TO: Thomas J. Krueger, Esq.**FIRM NAME:** United States Environmental Protection Agency**FILE NO.:****PHONE NUMBER:** 312-886-0562**FAX NUMBER:** 312-886-0747**FROM:** Carol M. Douglas**DIRECT LINE:** 312/977-4368**DATE:** February 21, 2003**NUMBER OF PAGES:** 4

(Including Cover Page)

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February 19, 2003

Ms. Kendra Pohn
Assistant Attorney General
Environmental Law Bureau Office of the Illinois Attorney General
188 West Randolph Street
20th Floor
Chicago, IL 60601

Dear Ms. Pohn:

As discussed on the telephone, Tricon Industries, Inc. ("Tricon") believes that your information regarding Tricon's alleged role in contributing to contamination in and around Ellsworth Industrial Park ("Ellsworth") is incorrect. Since the inception of this matter, Tricon has been improperly associated with high levels of trichloroethylene (TCE) (between 220,000 ug/kg and 500,000 ug/kg) found at 5400 Janes Avenue ("the Janes Avenue Property"). As a result of this error, Tricon was included in the Phase II Site Assessment Report ("the Weston Report") as one of three "Probable Source Facilities" based solely on the Janes Avenue Property. None of the other Tricon properties in Ellsworth, including the property located at 2324 Wisconsin Avenue ("the Wisconsin Avenue Property"), was ever tested by Weston. Copies of the relevant pages from the Weston Report are attached hereto as Exhibit A.

Tricon does not own the Janes Avenue Property; it has merely been a lessee since the mid-1980s. In addition, Tricon has never used chlorinated solvents at the Janes Avenue Property, and could not have contributed to the levels of TCE present there. Moreover, Tricon does not use and has never used TCE in any of its operations at any location. See Tricon Statement of Operations, submitted on December 16, 2003 to USEPA, and attached hereto as Exhibit B. Tricon is neither an owner nor operator of the Janes Avenue Property and, therefore, has no liability for contamination at the Janes Avenue Property.

Furthermore, both the United States Environmental Protection Agency ("USEPA") and the Illinois Environmental Protection Agency ("IEPA") know unequivocally that

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Principal Manufacturing Company's ("Principal") improper disposal of hazardous materials is the reason for the levels of contamination found at the Janes Avenue Property. See Report of Joseph Malek dated December 16, 2003, attached hereto as Exhibit C. As you can see, this practice by Principal took place in the 1970s, before Tricon was even a tenant in the building. Therefore, Tricon had absolutely no involvement in these activities.

Steve Faryan has acknowledged that the information documented in this Report is the sole reason the Janes Avenue Property was tested in the first place. Notwithstanding USEPA and IEPA's knowledge of Principal's activities at the time the Weston Report was issued, the Weston Report incorrectly and unfairly named Tricon as a "probable source." This inconceivable and unexplained error has damaged Tricon immeasurably, especially within the PRP Group on the critical issue of allocation.

Tricon has gone back and forth with Tom Krueger of USEPA to remedy this situation. See Tricon's letters dated September 17, 2002, December 16, 2002 and January 16, 2002, attached hereto as Exhibits D, E and F, respectively. See also Tom Krueger's letters dated January 22, 2003 and February 6, 2003, attached hereto as Exhibits G and H, respectively. Although USEPA has acknowledged the errors in the Weston Report and has promised a more complete remedy for Tricon, it is clear that Tricon continues to be damaged by the glaring errors in the Weston Report. Based on our conversation today, it is clear that your office is contemplating bringing a lawsuit against Tricon based on contamination found at the Janes Avenue Property for which Tricon is not liable, even though your stated basis for possibly naming Tricon is Tricon's activities at 2324 Wisconsin Avenue ("the Wisconsin Avenue Property"). This inaccurate commingling between Tricon's involvement at the Janes Avenue Property and its involvement with the Wisconsin Avenue Property has been another ongoing problem for Tricon caused by USEPA's inaccurate information. See Exhibit D.

On the telephone today, you mentioned that Tricon had a hit of 500,000 ppb of TCE at the Wisconsin Avenue Property. In fact, the 500,000 ug/kg occurred at the Janes Avenue Property. See Exhibit A. Tricon does not use TCE *at all*, including at the Wisconsin Avenue Property. In addition, no testing or sampling whatsoever was conducted at the Wisconsin Avenue Property by Weston. The only relevant information in your possession which relates to the Wisconsin Avenue Property is a Phase II Report dated December 12, 2001 which was submitted by Tricon in its 104(e) response. On November 13, 2002 during a meeting between Tricon representatives, including myself, and various agency representatives, Steve Faryan acknowledged that, apart from the Janes Avenue Property, Tricon's Phase II Report would be the

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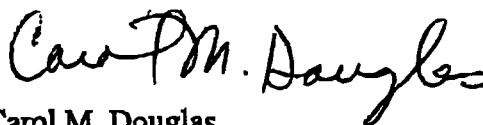
only basis for including Tricon as a PRP in the CERCLA action. A copy of the relevant pages is attached hereto as Exhibit I.

As you can see, there were no detections of any volatile organic compound (VOC) in soil outside the building at the Wisconsin Avenue Property (GP-1) and insignificant levels of tetrachloroethene (PCE) under the building (134 ug/kg in HB-1 and 148 ug/kg in HB-2). Under the Illinois TACO standard, these soil levels are significantly below the Class II soil to groundwater value, which is 300 ug/kg. Although these levels are slightly above the Class I soil to groundwater value, which is 60 ug/kg, any risk assessment under the TACO regulations would consider the building to be an engineered barrier, which should exclude this pathway as a risk. Moreover, preliminary investigation of the soil beneath this southern area of Ellsworth indicates there are significant thicknesses of low-permeability clay that could inhibit migration from soil to groundwater. See Exhibit A, pp. 5-10.

Based on the Phase II Report, there is no basis for naming Tricon in any lawsuit brought by IEPA. The minor detections documented in the Phase II Report are similar to those found for other PRPs, including Fusibond and Lindy, against whom you have insufficient information to bring a lawsuit. For this reason, it would be unfair, untenable and contrary to the known evidence for your office to commence litigation proceedings against Tricon.

Thank you for your attention to this matter. I look forward to hearing from you.

Very truly yours,



Carol M. Douglas

Cc: John J. Winkler (w/o attachments)
Vice President - Internal Operations, Tricon Industries, Inc.

Rosemarie Cazeau
Assistant Attorney General and Bureau Chief -- IEPA

Thomas J. Krueger (w/o attachments) ✓
Associate Regional Counsel -- USEPA